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UNCLAS SECTION 01 OF 06 MONROVIA 000076

SENSITIVE
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STATE FOR EEB/IFD/OIA - J. NATHANIEL HATCHER
PLEASE PASS OPIC AND USTR

E.O. 12598: N/A

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SUBJECT: LIBERIA: INVESTMENT CLIMATE STATEMENT 2009

REF: STATE 123907

¶1. There is growing investor interest in Liberia, particularly in agriculture, construction, the extractive industries and tourism. UN sanctions on timber exports were lifted in 2006 and on diamonds in early 2007 as Liberia became compliant with the Kimberly Process.

The removal of sanctions opens the way to renewed investment activity in those sectors. Liberia debuted on the International Finance Corporation (IFC) "Doing Business" ranking and the Transparency International corruption index in 2007, and improved sharply in 2008. The National Investment Commission announced \$132 million in new investment in 2008, and total business registrations in 2008 increased 12% from the previous year. (Note: All currency amounts are in U.S. dollars. End note.)

¶2. Five years of peace have helped Liberia recover from the ravages of civil war. Much of Liberia's infrastructure -- including roads, electrical grid, and communication systems -- remains in ruins but progress, supported by the substantial infusion of international development assistance, continues. Facilities for foreign visitors are adequate in the capital, Monrovia, but virtually non-existent in the rest of the country. There is a tremendous demand for jobs, with employment in the formal economy estimated at about 15% of the available labor force. Most labor is unskilled, and the illiteracy rate is estimated to be between 60% and 85%. While there are no landline phones, cell phone service is widely available and coverage is being extended into rural areas. Although Internet access is available, it remains relatively expensive, especially for high-speed connections. It is likely that major foreign investments will be expected to include support for schools, medical, and other social services as part of any concession agreement.

¶3. There are three serious challenges the Liberian government must address as it works to ensure equitable economic growth and reduce poverty: land tenure disputes, corruption, and the related factor of a dysfunctional judicial system. Expanded investment in promising sectors such as agriculture, forestry, mining, or tourism, and the ability to provide affordable housing for more Liberians, depends on rapid clarification of the tangled land tenure regimes and a significantly improved judicial system.

Openness to Foreign Investment

¶4. The impact of years of violence and bad governance undermined rule of law and created unchecked opportunities for corruption. The government has benefited from the Governance and Economic Management Assistance Program (GEMAP), which seeks to institute accountability, responsibility, and transparency in the fiscal management of the government and key state-owned enterprises. GEMAP has had a positive effect in many areas that influence foreign investment decisions such as mining and forestry policies, and transparency in the procurement process. However, lack of training, inadequate salaries and a culture of corruption have created a judicial system

that actively hampers investment.

15. Liberia improved by 13 ranks on the IFC's "Doing Business" ranking in 2008, reaching number 150 out of 181 countries. The Liberia Better Business Forum, a public-private initiative established in late 2007, is guiding proposals to further improve the business climate. However, the government continues to wrestle with finding the balance between an open, nationality-neutral investment climate that would encourage the energy, ideas, and capital that create jobs and provide lower prices and higher value for consumers, and "empowering" domestic businesses.

16. Seeking to empower Liberian businesses, the government in 1975 promulgated a "Liberianization Policy," an Act to amend the General Business Law. The Act set aside 12 business activities exclusively for Liberians. An amendment in 1998 increased the number of sectors reserved for Liberians to 26. These businesses include:

- Block making with cement, clay or like materials
- Supply of sand, stone and granite
- Operation of gas stations
- Peddling
- Ice cream manufacturing
- Commercial printing
- Travel agencies
- Advertising agencies
- Graphics and commercial arts
- Distribution in Liberia of locally manufactured products (this provision shall not prevent manufacturers or producers from transporting or otherwise distributing their products to Liberian citizens or qualified persons for resale)
- Cinemas

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- Production of poultry products
- Importation or sale of second-hand or used clothing
- Retail sale of rice
- Ice making or sale of ice
- Operation of water purification or bottling plant valued at less than \$100,000 or the sale/distribution of water purified in Liberia
- Importation and sale of used cars
- Tire repair
- Auto repair shops with investments of less than \$50,000
- Entertainment centers not connected with established hotels
- Retail sale of animal and poultry food
- Taxi and trucking
- Shoe repair
- Retail sale of timber and planks
- Bakeries
- Retail sale of pharmaceuticals

17. The Act is still in force but has not been effective in increasing Liberian participation in commercial industries, nor has enforcement been consistent. The Liberianization Act mandates that qualified Liberians be employed at all levels, including upper management of foreign-owned companies. Some businesses owned by non-Liberians operate in contravention of the law. Using the Liberianization law, the Ministry of Labor has delayed work permits for expatriates and intervened in negotiations between investors/management and their Liberian employees.

Conversion and Transfer Policies

18. Both Liberian and U.S. dollars are legal tender. Most business and government transactions (such as taxes) are conducted in U.S. dollars; most street transactions are in Liberian ("Liberty") dollars. The Investment Code allows the transfer of funds associated with investments, including profits. There are no restrictions on converting or transferring investment funds. ATMs are not connected to global electronic banking networks and traveler's checks and credit/debit cards are rarely accepted.

19. The Central Bank of Liberia regulates foreign exchange transfers. Transfer of sums in excess of \$10,000 must be reported to the Central Bank of Liberia, and no more than \$7,500 in foreign currency

banknotes can be moved out of the country at one time. Larger sums must be transferred via bank draft or other financial instruments. Persons without a Liberian bank account are limited to two outgoing \$5,000 over-the-counter cash wire transfers per month.

Expropriation and Compensation

¶10. The Embassy is aware of one claim by a U.S. firm of expropriation (looting) by LURD rebels who attacked Monrovia in 2003, before the current government was elected. The claimant has not been in touch with the Embassy since 2004.

Dispute Settlement

¶11. Liberia's legal system is similar to the criminal and civil law in the United States, but laws are not implemented consistently or predictably. Investors cannot rely on the court system as a fair arbiter of disputes. Judges and other judicial officers are poorly paid, courthouses are in disrepair, and administrative support is weak. Judgments can be purchased, and foreign firms tend to be at a disadvantage. In 2008 an unreasonable court finding caused a major foreign rubber company to cease operations, and frivolous suits have been used to harass other investors. Due to the backlog of cases, it can be years before a hearing takes place. The Sirleaf government is committed to judicial reform, and there are plans underway to expand Alternative Dispute Resolution mechanisms, but reform will take time.

Performance Requirements/Incentives

¶12. The Investment Incentive Code of the Republic of Liberia (the Code), adopted in 1966 and revised in 1973, prohibits nationalization of private enterprises and aims to attract foreign investment. The Government is revising the Code, but under the current Code, approved projects must ensure the employment of Liberians at all levels and expand employment and training activities as the enterprise grows. In addition, investors must permit Liberians to purchase shares or otherwise participate in the ownership of the enterprise, include a local value-added content of not less than 25% of the value of gross output, and utilize Liberian origin raw materials and other supplies. An approved investment

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should use imports only when local products are not available in sufficient quantity and/or its quality or price is not comparable to the intended import, as determined by the Government. Investment incentives may include exemption from customs duty and tax exemption on profits re-invested in fixed assets, with exemption of the remaining profits from 50% of the income tax that would be otherwise payable. There is also provision for loss carry-over and accelerated depreciation of fixed assets. The National Investment Commission of Liberia (NIC) implements the Code, and more details are available on the NIC website: <http://www.nic.gov.lr/>

Right to Private Ownership and Establishment

¶13. Land ownership is restricted to Liberian citizens. Chapter III, Article 22 of Liberia's Constitution states:

"Every person shall have the right to own property alone as well as in association with others, provided that only Liberian citizens shall have the right to own real property within the Republic. Private property rights, however, shall not extend to any mineral resources on or beneath any land or to any lands under the seas and waterways of the Republic. All mineral resources in and under the seas and other waterways shall belong to the Republic. Non-citizen missionary, educational and other benevolent institutions shall have the right to own property, as long as that property is used for the purposes for which acquired; property no longer so used shall escheat to the Republic."

¶14. The 2006 Forestry Reform Law states that natural forests are

owned by the Republic, with two exceptions (Chapter II, Section 2.1). Rights to land ownership and to use of resources such as minerals and timber are likely to evolve in coming years.

¶15. Many foreign businesses have entered into long-term leases, but disputes over land ownership and squatters' rights remain contentious, particularly for large concessions. Violence based on land disputes erupted in Nimba County in late 2008.

Protection of Property Rights

¶16. Conflicts between customary and statutory land tenure systems have not been reconciled. The official archives, including property deeds and secured property interests, were looted during the war and disputes over real estate ownership are difficult to adjudicate. The lack of adequate facilities and salaries for judicial officers also degrades enforcement of property rights as judges sometimes decide cases in favor of the highest bidders. The Ministry of Lands, Mines and Energy, which is in charge of survey and validation of land claims, is planning to implement a national mining cadastre that could eventually incorporate land title registrations. There have been cases of fraud by government-licenses land surveyors.

¶17. Liberia is a member of the World Intellectual Property Organization (WIPO) and a contracting party to international conventions and treaties on the protection of intellectual and industrial property rights, including the Berne, Paris, Lisbon, Vienna and Washington conventions and the Madrid Agreement. The Act adopting the New Copyright Law of Liberia, approved in July 1997, provides the legal and administrative framework for protection of intellectual and industrial property rights. The Copyright Office (CRO) and the Industrial Property Office (IPO) manage these issues, but lack the capacity to function effectively.

¶18. As of January 10, 2008, all imports of intellectual property must be so identified on the import permit (rather than being identified as "general merchandise"). All businesses dealing in intellectual property must reflect that on their business registration form.

Holders of intellectual property rights have access to judicial redress but enforcement is minimal. Infringement of intellectual and industrial property rights is prevalent. Movies and music are duplicated. Counterfeit drugs, apparel, cosmetics, and computer software and hardware are sold openly. Broadcasters do not tend to pay royalties for use of protected material.

Transparency of the Regulatory System

¶19. The Liberian government is committed to improving Liberia's ranking in the next "Doing Business" index by making regulations more transparent, accountable, and effective. One focus is completion of "one-stop shops" to facilitate imports and investment.

The government's implementation of GEMAP and agreement with policy prescriptions advanced by the International Monetary Fund (IMF) are

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showing results. New regulations are improving the transparency of the government's Public Procurement and Concession Commission (PPCC). Harmonization of the regulatory environment across ministries and agencies with conflicting rules and regulations is ongoing. However, regulators can still be arbitrary or heavy-handed.

Efficient Capital Markets and Portfolio Investment

¶20. The Liberian banking system provides basic banking services but there is no effective capital market or options for portfolio investment. Financial institutions are undercapitalized and unable to meet the credit demands of the business community. Total assets of the six commercial banks were approximately \$158 million in 2008.

Minimum capital requirements were raised to \$6 million in 2008, and will be further increased to \$10 million in 2010. The minimum capital adequacy ratio was increased from 8% to 10% in 2008. Banks

have continued to reduce the proportion of non-performing loans since 2003, but loan quality remains low.

¶21. The weak judicial system means financial institutions find it difficult to recover bad loans through the courts. In addition, there is no effective credit rating system, and many firms lack the business records necessary for credit approval. The obstacles to domestic travel and communication increase the risk in accepting collateral outside Monrovia and the lack of reliable land title hampers access to credit.

¶22. The United States has programs to support investment in small and medium Liberian companies, some of which provide services, such as lodging, communications, and construction, which improve the overall investment climate. In 2007, the Overseas Private Investment Corporation committed \$20 million to the Liberia Enterprise Development Finance Corporation (LEDFC) to support small and medium Liberian enterprises. LEDFC, which works closely with the commercial banks, is the first non-bank financial institution licensed by the Central Bank of Liberia. This program should strengthen the financial sector and improve access to capital by growing Liberian firms. The African Development Foundation has invested \$1.67 million in Liberian small and medium-sized enterprises, including farmer cooperatives, as of the end of 2008 and has about \$1 million in the pipeline for the first half of 2009. These projects provide sustainable jobs, technology transfer, financial and general management training

Political Violence

¶23. There has been no significant political violence since the signing of the Accra Comprehensive Peace Agreement in 2003 and the deployment of 15,000 UN peacekeepers throughout Liberia. The former Armed Forces of Liberia (AFL) was completely demobilized and with USG assistance a modern, professional force is being trained. By the end of 2010, the AFL will reach initial operational capability, but will still rely on international support. The Liberian National Police is also being restructured and includes an Emergency Response Unit (ERU), which has the ability to respond rapidly and to address sudden tactical police emergencies. The UN troops are gradually being withdrawn as Liberia's security forces gain in strength and experience and now number under 12,000. Increasing freedom and transparency for the Liberian people has led to vigorous pursuit of perceived rights, which results in active, often acrimonious, but non-violent political debate. That said, access to land remains a volatile issue that has led to violent disputes on the local level.

Corruption

¶24. The government is tackling corruption, but it remains systemic. In 2008, Transparency International rated Liberia 138th of 179 countries on its corruption perception index, up from 150th place the previous year. The Mo Ibrahim African governance index showed Liberia as "most improved" in 2008, and in the 2008 World Bank Worldwide Governance Indicator Liberia showed more improvement over the past two years in "control of corruption" than any other country in the world. Although corruption is being addressed, travelers may encounter officials who solicit bribes (often euphemistically referred to as "cold water" or "my Christmas").

¶25. There have been improvements in the transparency of government procurement, and the 40% increase in government revenues in FY2007-08, on top of the 75% increase FY2006-07, reflects progress in corralling revenue leaks. Since taking office, the Sirleaf administration has boosted civil service salaries over 150% and started paying salary arrears incurred by past governments.

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However, the starting government salary is still only \$70 per month and despite efforts at reform there are still delays in paying government employees. The Sirleaf administration is wrestling with how to maintain civil service parity while removing incentives to corruption in positions of traditionally high rent-seeking potential.

OPIC and Other Investment Insurance Programs

¶26. OPIC provides coverage for investors in Liberia. GSP eligibility was restored in February 2006.

Labor

¶27. The Liberian labor force is predominantly illiterate and unskilled, and most Liberians lack basic computer skills. The literacy rate is believed to be about 15% for those below age thirty-five. Many skilled professionals have emigrated. The employment rate in the formal sector is approximately 15%.

¶28. Employees enjoy freedom of association, they have the right to establish, and become members of organizations of their own choosing without previous authorization or coercion. In this regard, no employer shall discriminate against an employee because of membership in a labor organization. While labor laws and policies themselves do not distort or impede investment, labor disputes are subject to arbitrariness with Liberian employees favored in legal disputes with foreign investors, regardless of the merits of the case. Labor legislation was revised in 2007, repealing a decree that prohibited workers from striking and repealing section 1508 (3), which permitted employees to be dismissed without cause.

¶29. According to Liberian law, labor organizations and associations have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities, and to formulate their programs. The labor law specifies that no industrial labor union or organization shall exercise any privilege or function for agricultural workers and no agricultural labor union or organization shall exercise any privilege or function for industrial workers.

Foreign Trade Zones/Free Ports

¶30. In 1976, the government of Liberia created the Liberia Industrial Free Zone Authority (LIFZA) to promote industrial and corporate growth, but no FTZs are active now. Almost no manufacturing is done in Liberia.

Foreign Direct Investment Statistics

¶31. Investment and commercial activity continue to increase. The National Investment Commission reported \$132 million in new investment in 2008, a 36% increase over 2007 and exceeding the target of \$100 million. Business registration data confirm the sharp increase in investment activity. According to statistics from the Bureau of Domestic Trade at the Ministry of Commerce, total businesses registrations in 2007 (foreign and domestic) increased 12% over the previous year, from 6,764 firms in 2006 to 7,569 firms in 2007. Of total business registrations in 2007, 564 were foreign firms. Partial-year figures for January-September 2008 show 860 foreign firms registered in Liberia. (Note: businesses must register annually. End note.) Although more detailed statistics are still not available, more data are being produced every year.

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the extractive industries, and agriculture, particularly iron ore,

rubber and oil palm. Foreign firms have invested in the GSM cellular phone market, and have also expressed interest in the

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privatization of the Liberia Telecommunications Corporation. There is extensive replanting of rubber trees and general rehabilitation and expansion of tree crop plantations. Under the Kimberly Process, Liberia has resumed export of diamonds. The lifting of UN timber sanctions in 2006 and signing of the forestry chain-of-custody agreement in December 2007 opened the way to export of timber products. There is increasing interest in mining and oil exploration. Firms interested in investment opportunities in Liberia should contact the National Investment Commission at <http://www.nic.gov.lr/>.